Michigan Legal Services

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SUBMITTED ELECTRONICALLY

August 29, 2011

Secretary Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington D.C. 20201

RE: Michigan's Request for Adjustment of the Individual Market Medical Loss Ratio

Dear Secretary Sebelius:

On behalf of Michigan Legal Services I write in opposition to Commissioner Clinton's request dated July 28, 2011 for a downward adjustment of the 80% Medical Loss Ratio (MLR) in Michigan's individual market. Michigan Legal Services (MLS) is an anti-poverty agency based in Detroit. MLS has existed for over a quarter of a century and has been involved in health insurance reform for that whole period, and will continue to remain involved for years to come.

The MLR is especially important to both low-wage workers and people with chronic illnesses. These workers who often must buy their own policies need the most effective use of their scarce and hard earned dollars. Others in the individual market purchase from Blue Cross as the insurer of last resort, HMOs, or the Pre-Existing Condition plan established under the Affordable Care Act (ACA). These plans all are subject to 'guaranteed issue' rules. Although Blue Cross dominates the marketplace, there will be choices for consumers among several health insurers even if the carriers with low MLRs do exit the state.

The MLRs in Michigan's small group and large group market are substantially better than the MLRs in the individual market. Michigan's small group market covers over 500,000 people and the MLR for 85% of the covered population is over 80%. In fact Blue Care Network, which covers 75,000 people in this market, has a 79.4% MLR that is easily adjustable to 80%. The only carriers in the small group market – three of them – which have an MLR significantly lower than 80% cover only 24,123 people which is less than 5% of the market. (See Exhibit 1 attached.)

The Commissioner probably did not ask for a MLR adjustment in either the small or large group markets because the MLRs are already high. However, the story is quite different in Michigan's individual market. In the individual market the commissioner presents the following data:

Table One: MLRs of Largest Insurers in Michigan's Individual Market

Insurer	**Market Share[1]**	**Population Covered in Thousands[2]**	**MLR[3]**
Blue Cross Blue Shield	55.1	189	93
Golden Rule	11.7	40	61.4
Time Assurance	6.4	22	66.8
Blue Cross Life	5.6	19	88
Aetna Life	4.5	15	72.2
Humana	3.7	13	72.4
World Insurance	1.8	6	55.4
TOTALS	**88.7**	**305**	---

Companies in red have low MLRs, or MLRs less than 80%.

The Commissioner also points out that 13 carriers with more than 1,000 clients have 9.4% of the market and cover 32,000 people. Two have announced they are exiting the market.

Table Two: MLRs of Smaller Insurers in Michigan's Individual Market

Insurer	**Market Share[4]**	**Population Covered in Thousands[5]**	**MLR[6]**
Alliance	1.1	3.8	71.4
Celtic	1.1	3.8	79.4
Blue Care Network	1.0	3.3	104.7
Health Alliance Plan	.9	3.1	97.8
Priority Health	.9	3.0	69.9
John Alden Life	.9	3.0	67.9
MEGA Life	**Exiting Market**	**Exiting Market**	**Exiting Market**
American Community Mutual	**Exiting Market**	**Exiting Market**	**Exiting Market**
American Medical S. L.	.7	2.5	80.3
Madison Nat. L.	.4	1.3	60.7
American Republic	.3	1.2	64
Consumers Life	.3	1.0	61.2
Blue Care of Mich.	.3	1.0	104.3

Companies in red have low MLRs, or MLRs less than 80%.

[1] R. Kevin Clinton, Request for Adjustment of Individual Market Medical Loss Ratio for Michigan, Table 1 – Largest Individual Health Insurance Issuers 2 (July 28, 2011).
[2] *Id.*
[3] R. Kevin Clinton, Request for Adjustment of Individual Market Medical Loss Ratio for Michigan, Table 2 – Indicated Individual Medical Loss Ratios based on 2010 Results 3 (July 28, 2011).
[4] R. Kevin Clinton, Request for Individual Market MLR Adjustment – Michigan Supporting Information Per 45 CLR §158.321 (July 28, 2011).
[5] *Id.*
[6] *Id.*

According to the table above, the variance among these carriers is from a low of 55.4% MLR (World) to a high of 104.7% MLR (BCN). To give World, an obviously sub-par performer, a waiver is unfair to the carriers that actually provide medical care to their clients.

We point out that even in the smaller carriers – the bottom 13 – four have at least an 80% MLR and one has 79.4% MLR. This evidence demonstrates that it is possible for smaller insurance companies to meet the current MLR requirement and to stay viable, and weakens OFIR's central claim that implementing the MLR requirement as currently written threatens the vibrancy of Michigan's individual insurance market.

One of Commissioner Clinton's main arguments is that if the MLR is not adjusted carriers may have to pay rebates that exceed their posted profits. However, Table 3 – Estimated Rebates and Impact on After Tax Gains/(Losses) on page four of his request, is misleading. The largest negative number is in Blue Cross's column – a carrier with a 93% MLR that will pay no rebates. Removing BC-BSM and BCS Life, which also has a >80% MLR, yields the following:

Table Three: Revised Estimated After-Tax Net Gain/(Loss) After Rebates – Individual Market[7]

Company	**Estimated After-Tax Net Gain/(Loss) After Rebates - Individual**
Golden Rule	3.6
Time Assurance	(2.1)
Aetna Life	2.0
Humana	(0.8)
World	(1.2)
Other issuers with > 1,000 enrollees*	(1.4)
REVISED TOTAL	**0.1**

*A few of the smaller carriers have MLRs of greater than 80%, but the data in the Commissioner's report was not disaggregated.

In fact, what OFIR painted as a loss is actually a gain. The Commissioner's argument amounts to the proverbial "mole hill." It is also speculative. The companies that Commissioner Clinton believes will lose revenue are few. Also, certainly some normal capitalistic shake up should be expected when poor performers are actually held to a reasonable standard like 80% MLR.

The MLR standard was included in the ACA because enough people believe that it is both a necessary and fair standard. These carriers need to treat the MLR like any other reasonable business condition that they have to adapt to in order to survive, and the small carriers who already meet the 80% requirement show that doing so is indeed possible. We should not care about the burden of a rebate on

[7] R. Kevin Clinton, Request for Adjustment of Individual Market Medical Loss Ratio for Michigan, Table 3 – Indicated Individual Medical Loss Ratios based on 2010 Results 4 (July 28, 2011).

a company that is not competing well and not covering its clients well. Rather, we should care about the burden that individuals in this market face as they struggle to hold onto health insurance coverage.

For example, World has approximately 6,000 policy holders and a MLR of 55.4%.[8] World brings in $11.8 million in premiums and pay brokers $3.1 million a year.[9] Broker's fees compose 26.7% of their premium dollars, and no one else in the upper group of seven companies comes close to such an exorbitant broker's share.[10] For a premium dollar World pays 55.4 cents for medical care; 26.7 cents to a broker; and for profit and other overhead have 17.9 cents left.[11] Without brokers' fees, World's MLR would be 82.1% assuming it spent the brokers' share on actual medical claims. The ACA was not enacted to protect exorbitant broker's fees, and granting OFIR's request allows this wasteful and harmful behavior to continue for that much longer.

Other companies have very different broker's fee structures. Golden Rule, who has a MLR of 61.4%, spends about 10% on brokers.[12] Time Assurance, with a MLR of 66.8%, spends about the same.[13] With adjustments of their spending on brokers' fees alone, both would be much closer to the 80% MLR the ACA requires.

American Medical, who has a MLR of over 80%, pays brokers 3%.[14] Somehow, Celtic pays 12% to brokers and still manages an MLR of 79.4%.[15] A small adjustment will put Celtic at the 80% level this year. If these two companies can manage 80% or very close to 80% while still paying their brokers, the others should be able to do the same.

On page five of his request, Commissioner Clinton is concerned that reducing expenditures on broker's fees will compromise consumers' access to qualified brokers.[16] In addition to this concern being unsupported by evidence in the request, American Medical and Celtic are examples of companies who still manage to pay their brokers and just about reach the 80% MLR required. While this requirement will make insurance companies adjust their business practices, there are insurance companies in this market who show that such change is possible. The history of these companies also suggests that the Commissioner's concern that brokers and agents will be harmed by the new standard is based on inflated and unfair commissions. Carriers are able to both pay brokers and have an 80% MLR. Two carriers prove that and others are close. This new standard clearly will not drive the brokers for Celtic and American Medical out of the field.

As far as consumers are concerned, the Commissioner's requested adjustment would simply prolong the problem of unnecessarily inflated premiums and difficulties in accessing the care that they need. Granting the request creates additional unfairness between carriers and consumers. This course of action undermines some of the fundamental goals of the ACA's insurance reforms, which are to make insurance more accessible and affordable for consumers and eliminate waste in the insurance industry.

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[8] R. Kevin Clinton, *supra* note 4.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] R. Kevin Clinton, Request for Adjustment of Individual Market Medical Loss Ratio for Michigan 5 (July 28, 2011).

We ask the Secretary to deny this request. This request favors a small number of companies that are not performing well for their enrollees, at least in paying medical claims, which is what they are supposed to be doing. The firms with the low MLRs are very likely "cherry picking" – insuring the healthy so they need not pay medical claims. This is like a fire insurance company only issuing policies to buildings built of metal with no flammable contents.

We also ask the Secretary to request more data from OFIR. Specifically, the number of applications for insurance from each carrier that were submitted over the last two years, the number denied because of pre-existing conditions, and the number of people whose policies were rescinded and why. This data is needed to accurately determine the market behavior of the companies that are now requesting relief through OFIR's request.

Commissioner Clinton exaggerates the effect of the new requirement on the marketplace. It certainly does not threaten the stability of the market. Commissioner Clinton's emphasis is on protecting health insurers from the MLR requirement rather than protecting consumers from carriers that do not provide the medical coverage needed. This unbalanced approach – especially in the individual market where enrollees by definition do not have much bargaining power with their carriers – must change.

Please deny this request. If you have any questions or feedback, you may reach me at gbenjamin@michiganlegal.org or 313-590-6136.

Very truly yours,

Gary Benjamin
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Michigan Legal Services